

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**DIANE LOCKER,**

**Plaintiff,**

**v.**

**Civil Action No.: 2:17cv342**

**NANCY A. BERRYHILL,  
ACTING COMMISSIONER  
OF SOCIAL SECURITY,**

**Defendant.**

**OPINION AND ORDER**

Plaintiff Diane Locker (“Plaintiff” or “Locker”) brought this action under 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Acting Commissioner of the Social Security Administration (“Acting Commissioner”) denying her claim for Disability Insurance Benefits (“DIB”) pursuant to Title II of the Social Security Act. Pursuant to the provisions of 28 U.S.C. §§ 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated September 27, 2017, this matter was referred to a United States Magistrate Judge for a Report and Recommendation. Doc. 10.

The Report and Recommendation of the Magistrate Judge (“R&R”), filed on July 6, 2018, finds that the Administrative Law Judge (“ALJ”) erred by failing to fully develop the record prior to determining that Plaintiff was not under a disability. Doc. 18 at 14-17. Accordingly, the Magistrate Judge recommends that Plaintiff’s Motion for Summary Judgment, Doc. 13, be GRANTED to the extent it seeks reversal and remand of the Commissioner’s

decision, that the Acting Commissioner's Motion for Summary Judgment, Doc. 15, be **DENIED**, and that the final decision of the Acting Commissioner be **VACATED** and **REMANDED**.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date the R&R was sent, see 28 U.S.C. §636(b) and Federal Rule of Civil procedure 72(b), computed pursuant to Federal Rule of Civil Procedure 6(a). Doc. 18 at 20. The parties were also given an additional three (3) days, pursuant to Rule 6(d) of the Federal Rules of Civil Procedure. The time for filing written objections has now passed, and neither party has filed objections. As indicated in the R&R, failure to file timely objections to the findings and recommendations set forth in the R&R "will result in waiver of right to appeal from a judgment of this Court based on such findings and recommendations." Id.

This Court has reviewed the R&R of the Magistrate Judge and hereby adopts and approves in full the findings and recommendations set forth therein. Accordingly, it is hereby **ORDERED** that Plaintiff's Motion for Summary Judgment, Doc. 13, is **GRANTED** to the extent it seeks reversal and remand of the Commissioner's decision, that the Acting Commissioner's Motion for Summary Judgment, Doc. 15, is **DENIED**, and that the Acting Commissioner's final decision is **VACATED** and **REMANDED**.

The parties are advised that they may appeal from this Opinion and Final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within sixty (60) days from the date of this Order.

The Clerk is **REQUESTED** to send a copy of this Opinion and Order to all counsel of record.

It is so **ORDERED**.

/s/  
Henry Coke Morgan, Jr.  
Senior United States District Judge

HCM  
HENRY COKE MORGAN, JR.  
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
August 30, 2018